



State of Wisconsin  
Scott McCallum, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
James E. Harsdorf, Secretary

DATE: October 14, 2002

TO: Gary Poulson - Revisor of Statutes Office  
131 West Wilson Street, Suite 800

FROM: James E. Harsdorf, Secretary

SUBJECT: **Telemarketing “No Call” List -- Final Draft Rule for Publication**  
**(Clearinghouse Rule No. 02-036)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits the following rule for publication:

CLEARINGHOUSE RULE #: **02-036**

SUBJECT: **Telemarketing “No Call” List**

ADM. CODE REFERENCE: **ATCP 127, Subchapter V**

DATCP DOCKET #: **01-R-07**

We are enclosing a copy of the final draft rule, as adopted by DATCP. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

**Final Regulatory Flexibility Analysis (Summary)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates unfair and deceptive business practices under s. 100.20, Stats. DATCP has adopted rules, under ch. ATCP 127, Wis. Adm. Code, to protect consumers against unfair telemarketing practices. Under s. 100.52, Stats., the Legislature directed DATCP to create a telemarketing “no call” list. This rule, which expands DATCP’s current rules under ATCP 127, regulates telemarketing solicitations and creates a telemarketing “no-call” list.

Under this rule, consumers may contact DATCP to sign up for the “no call” list. Telemarketers may not call consumers whose telephone numbers appear on the list. Telemarketing firms must register with DATCP and pay fees to finance the list compilation and distribution (there is no other appropriation for the “no call” program). On a regular periodic basis, DATCP must update the list and distribute it to registered telemarketers.

Under current law, telemarketers must refrain from making repeat calls to call recipients who say they do not want to be called again. Under this rule, telemarketers must also refrain from calling individuals who register for the state's telemarketing "no call" list. Telemarketing firms must add, to their own "no call" lists, the numbers contained on the state's list.

DATCP will provide its "no call" list to registered telemarketing firms, in a format that is readable by all computer systems. Businesses that telemarket into any of the 20 or more states that already have telemarketing "no call" laws will already have systems to comply with this rule. Others may incur one-time cost to reprogram their systems.

Telemarketers must register and pay annual fees to finance the "no call" program (there is no other legislative appropriation). There is a basic annual fee of \$700 for the first year of operation, and \$500 for each subsequent year. Telemarketing firms that use more than 3 phone lines must pay a supplementary annual fee of \$75 per line. Small telemarketing firms will therefore pay less than large firms that use multiple lines.

Annual fees are paid in quarterly installments. In response to business comments, DATCP modified the final draft rule to provide that DATCP may reduce or waive one or more quarterly installments if the department's projected fiscal year-end cash balance exceeds projected expenditures in that fiscal year by more than 15%.

DATCP has tried to draft the "no call" rule to meet the reasonable expectations of consumers who do not wish to be called by telemarketers. At the same time, DATCP has tried to maintain a "level playing field" and a reasonable allocation of costs among competing businesses. Although the "no call" program will impose additional costs on telemarketing firms, it may also save costs incurred in calling consumers who do not wish to be called and who are not likely to respond favorably to sales solicitations.

DATCP understands that this rule will affect a wide array of businesses, possibly in ways that cannot be entirely foreseen at the present time. Within the first 12 months following the effective date of this rule, DATCP will evaluate the rule and its application to determine whether changes are needed. DATCP will solicit input from affected businesses as part of its review.

#### **Action by Legislative Committees (Summary)**

- On July 24, 2002, DATCP transmitted the proposed rule for legislative committee review.
- On July 31, 2002, the President of the Senate assigned the proposed rule to the Senate Committee on Privacy, Electronic Commerce and Financial Institutions. The Senate committee took no action on the proposed rule during its 30-day review period.

- On August 2, 2002, the Speaker of the Assembly assigned the proposed rule to the Assembly Committee on Financial Institutions. The committee did not meet or hold hearings on the rule. However, at the request of the committee chair, DATCP staff met with the committee chair and interested persons on August 13 and August 28 to discuss issues of concern. On September 3, 2002, the committee chair requested an additional meeting and extended the committee review period by 30 days. In response to this request, DATCP again met with the committee chair and interested persons on September 11, 2002.
- On September 26, 2002, the Assembly committee chair asked DATCP to make specific drafting changes to do the following:
  - Collect annual telemarketer registration fees in quarterly installments and allow DATCP to waive quarterly installments if DATCP's projected fiscal year-end cash balance exceeds DATCP's projected expenditures for that fiscal year by more than 15%.
  - Clarify that a telephone solicitation to a consumer on the "no call" list does not, by itself, result in a monetary loss for which the consumer may seek recovery.
  - Clarify, by note, the exemption for calls made to a current "client."
  - Exempt calls, made to a party to an existing contract, which are necessary to complete that contract.
  - Make a technical change to the prohibition against prerecorded telemarketing calls, to align that prohibition with s. 100.52, Stats.
  - Add the word "knowingly" to the prohibition against facilitating violations of the rule.
  - Exempt calls made by persons who are not compensated and have no financial interest in the sale promoted by the call.

DATCP provided, to the Senate committee chair, a copy of modifications requested by the Assembly committee chair. The Senate committee chair agreed with all of the requested modifications, except the last one listed above. On September 27, 2002, DATCP on its own initiative submitted, to both the Assembly and Senate committees, the modifications on which the Assembly and Senate committee chairs agreed (all except the last one listed above). Pursuant to s. 227.19(4)(b)3., Stats., the review jurisdiction of both committees was accordingly extended for 10 working days, through October 11, 2002. Neither committee took any action within the extended review period.